

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

75-1287

To be Argued by
ANTHONY F. CORRERI

B
PFS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

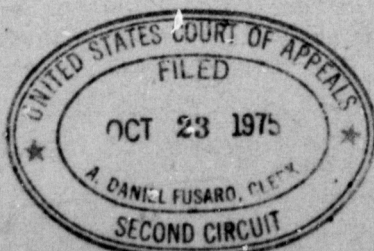
-against-

MANUEL RODRIGUEZ,

Appellant.

On Appeal from the U.S. District Court for the
Eastern District of New York

APPENDIX TO
BRIEF FOR APPELLANT



ANTHONY F. CORRERI
Attorney for Appellant
50 Mineola Boulevard
Mineola, New York 11501
(516) 746-2727

PAGINATION AS IN ORIGINAL COPY

Esquire Bond

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MADE IN U.S.A.

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APPEAL

75CR 112

PLATT, J.

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S.: Corcoran

vs.

MANUEL RODRIGUEZ a/k/a

Manolo Rodriguez

CLOSED

For Defendant:

Anthony Corcoran

50 Mineola Blvd

Mineola, NY

516-746-2727

Did unlawfully harbor aliens

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

DATE

NAME

RECEIVED

DISBURSED

Fine,	4,000.00	7/18/75	Notice of appeal (No Fee)		
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE

PROCEEDINGS

2-13-75	Before Bramwell, J - Indictment filed
2-20-75	Notice of Appearance filed.
2-20-75	Before PLATT, J - case called - deft & counsel A. Correrri present - deft arraigned & after being advised of his rights enters a plea of not guilty - 2 weeks for all motions - adjd to 3-7-75.
2/24/75	Magistrate's file 75 M 287 inserted into CR file.
3-7-75	Before Platt, J - case called - deft & counsel present - adjd to 3-21-75
3-7-75	Notice of Readiness for Trial filed
-14-75	By PLATT, J - Order to Show Cause filed, ret. 3-19-75, for quashing and dismissing each and every count of the Indictment etc.
3-19-75	Before PLATT, J - case called - deft not present - counsel Anthony Correrri present - defts motion argued for dismissal - decision App.1

750A 112

DATE	PROCEEDINGS
	reserved - case adjd to Mar. 21, 1975 at 2:00 PM for suppression hearing.
3-20-75	Memorandum of Law filed of deft in support of omnibus motion for various relief.
3-21-75	Before PLATT, J - case called - deft & counsel Anthony Correrri present - hearing begun (suppression) Hearing held and contd to 3-24-75.
3-24-75	Before PLATT, J - case called - hearing resumed - hearing contd to 3-25-75.
3-25-75	Before PLATT, J - case called - hearing resumed - Deft rests -defts motion to suppress - motion argued and denied - Trial ordered and BEGUN - Jurors selected and sworn - Trial contd to 3-26-75.
3-26-75	Before PLATT, J.- Case called- Deft and counsel present- Trial resumed- Trial contd to 3/27/75
3-27-75	Before PLATT, J - case called - deft and counsel present - trial resumed - defts motion to dismiss and for a directed verdict - motion denied - Govt motion to dismiss count 8 withdrawn - defts motion for dismissal - denied - deft rests - both sides rest - trial continued to 3-31-75.
3-31/75	Before PLATT, J.- Case called- Deft and counsel present-Trial resumed motion to suppress reopened- Motion argued-motion denied-Trial contd to 4/1/75
3-31/75	By PLATT, J.- Order of sustenance filed
4-1-75	2 stenographers transcripts filed (pgs 1 to 230)
4-1-75	By PLATT, J - Order of sustenance filed(14 persons-luncheon)
4-1-75	Before PLATT, J - case called - deft & counsel present - trial resumed - Jury returns with a verdict of guilty on counts 1, 2, 3 & 6 - not guilty on counts 4,5, 7, 9, 10, 11, 12 - Jury polled and discharged - trial concluded - sentence adjd without date.
6/23/75	Before PLATT, J.- Case called- Adjd to 6/13/75 for sentencing
6/13/75	Before PLATT, J.- Case called- Sentence adjd to 6/27/75
7/27/75	Before PLATT, J.- Case called- sentence adjd to 7/18/75
7/18/75	Before PLATT, J.- Case called- Deft and counsel present- Interpreter present Deft sentenced on counts 1,2,3 and 6 to imprisonment for a period of 4 years on each count to run concurrently, and fined \$1,000.00 on each count to run consecutively for a total fine of \$4,000.00-Execution of sentence and payment of fine stayed pending appeal-Clerk to file notice of appeal with fee.
7/18/75	Judgment and Commitment filed- certified copies to Marshal App. 2

D. C. 109

RJD:PFC:mt
F.#751,232

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

MANUEL RODRIGUEZ, a/k/a Manolo
Rodriguez,

Defendant.

----- X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 12th day of February, 1975, within the Eastern District of New York, the defendant MANUEL RODRIGUEZ, also known as Manolo Rodriguez, did wilfully and knowingly harbor at 18 Bunting Lane, Levittown, New York, one Jose Portillo, an alien not lawfully entitled to reside within the United States, as MANUEL RODRIGUEZ, also known as Manolo Rodriguez then knew. (Title 8, United States Code, Section 1324(a)(3)).

COUNT TWO

On or about the 12th day of February, 1975, within the Eastern District of New York, the defendant, MANUEL RODRIGUEZ, also known as Manolo Rodriguez, did wilfully and knowingly harbor at 18 Bunting Lane, Levittown, New York, one Jose Caballeao-Flores, an alien not lawfully entitled to reside within the United States, as MANUEL RODRIGUEZ, also known as Manolo Rodriguez then knew. (Title 8, United States Code, Section 1324(a)(3)).

Cr. No. 75 CR 112
(T.8, U.S.C., §1324(a)(3))

Platt. 9
2/13/75

COUNT THREE

On or about the 12th day of February, 1975, within the Eastern District of New York, the defendant MANUEL RODRIGUEZ, also known as Manolo Rodriguez, did wilfully and knowingly harbor at 18 Bunting Lane, Levittown, New York, one Jesus Porcello, an alien not lawfully entitled to reside within the United States, as MANUEL RODRIGUEZ, also known as Manolo Rodriguez then knew. (Title 8, United States Code, Section 1324(a)(3)).

COUNT FOUR

On or about the 12th day of February, 1975, within the Eastern District of New York, the defendant MANUEL RODRIGUEZ, also known as Manolo Rodriguez, did wilfully and knowingly harbor at 18 Bunting Lane, Levittown, New York, one Cesario Flores, an alien not lawfully entitled to reside within the United States, as MANUEL RODRIGUEZ, also known as Manolo Rodriguez then knew. (Title 8, United States Code, Section 1324(a)(3)).

COUNT FIVE

On or about the 12th day of February, 1975, within the Eastern District of New York, the defendant MANUEL RODRIGUEZ, also known as Manolo Rodriguez, did wilfully and knowingly harbor at 18 Bunting Lane, Levittown, New York, one Francisco Rogelio Flores Marquez, an alien not lawfully entitled to reside within the United States, as MANUEL RODRIGUEZ, also known as Manolo Rodriguez then knew. (Title 8, United States Code, Section 1324(a)(3)).

COUNT SIX

On or about the 12th day of February, 1975, within the Eastern District of New York, the defendant MANUEL RODRIGUEZ, also known as Manolo Rodriguez, did wilfully and knowingly harbor at 18 Bunting Lane, Levittown, New York, one Alba Luz Rivas, an alien not lawfully entitled to reside with the United States, as MANUEL

RODRIGUEZ, also known as Manolo Rodriguez then knew. (Title 8, United States Code, Section 1324(a)(3)).

COUNT SEVEN

On or about the 12th day of February, 1975, within the Eastern District of New York, the defendant MANUEL RODRIGUEZ, also known as Manolo Rodriguez, did wilfully and knowingly harbor at 18 Bunting Lane, Levittown, New York, one Ernesto Rivas-Rivas, an alien not lawfully entitled to reside within the United States, as MANUEL RODRIGUEZ, also known as Manolo Rodriguez then knew. (Title 8, United States Code, Section 1324(a)(3)).

COUNT EIGHT

On or about the 12th day of February, 1975, within the Eastern District of New York, the defendant MANUEL RODRIGUEZ, also known as Manolo Rodriguez, did wilfully and knowingly harbor at 18 Bunting Lane, Levittown, New York, one Bertha Alicia Villatoro, an alien not lawfully entitled to reside within the United States, as MANUEL RODRIGUEZ, also known as Manolo Rodriguez then knew. (Title 8, United States Code, Section 1324(a)(3)).

COUNT NINE

On or about the 12th day of February, 1975, within the Eastern District of New York, the defendant MANUEL RODRIGUEZ, also known as Manolo Rodriguez, did wilfully and knowingly harbor at 18 Bunting Lane, Levittown, New York, one Jorge Alberto Galeac-Alvarenga, an alien not lawfully entitled to reside within the United States, as MANUEL RODRIGUEZ, also known as Manolo Rodriguez then knew. (Title 8, United States Code, Section 1324(a)(3)).

COUNT TEN

On or about the 12th day of February, 1975, within the Eastern District of New York, the defendant MANUEL RODRIGUEZ, also

known as Manolo Rodriguez, did wilfully and knowingly harbor at 113 Brittle Lane, Levittown, New York, one Marcos Antonio Hernandez-Segovia, an alien not lawfully entitled to reside within the United States, as MANUEL RODRIGUEZ, also known as Manolo Rodriguez then knew. (Title 8, United States Code, Section 1324(a)(3)).

COUNT ELEVEN

On or about the 12th day of February, 1975, within the Eastern District of New York, the defendant MANUEL RODRIGUEZ, also known as Manolo Rodriguez, did wilfully and knowingly harbor at 113 Brittle Lane, Levittown, New York, one Jose Antonio Ramos, an alien not lawfully entitled to reside within the United States, as MANUEL RODRIGUEZ, also known as Manolo Rodriguez then knew. (Title 8, United States Code, Section 1324(a)(3)).

COUNT TWELVE

On or about the 12th day of February, 1975, within the Eastern District of New York, the defendant MANUEL RODRIGUEZ, also known as Manolo Rodriguez, did wilfully and knowingly harbor at 113 Brittle Lane, Levittown, New York, one Adalberto Hernandez-Joya, an alien not lawfully entitled to reside within the United States, as MANUEL RODRIGUEZ, also known as Manolo Rodriguez then knew. (Title 8, United States Code, Section 1324(a)(3)).

A TRUE BILL.

Foreman.

UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-X

UNITED STATES OF AMERICA

- against -

MANUEL RODRIGUEZ, a/k/a MANOLO
RODRIGUEZ,

Defendant.

-X

ORDER TO SHOW CAUSE

Cr. No. 75 C.R. 112
(T.S. U.S.C. § 1324 (a)
(b)

NOW comes the above named defendant, MANUEL RODRIGUEZ, also known as MANOLO RODRIGUEZ, by his attorney, ANTHONY F. CORRERI, Esq., upon the affirmation of ANTHONY F. CORRERI, dated the 14th day of March, 1975, the affidavits of MANUEL RODRIGUEZ, also known as Manulo Rodriguez, and JOSE RODRIGUEZ, both sworn to the 14th day of March, 1975, and upon the indictment and all the pleadings and proceedings in this action, and moves the Court for an order requiring the United States Attorney for the Eastern District of New York, to show cause before this Court at Courtroom #7 on the Fourth Floor of the United States Courthouse, 225 Cadman Plaza East, Borough of Brooklyn, City and State of New York, on the 19th day of March, 1975 at 10⁰⁰ o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made as follows:

- I. Quashing and dismissing each and every count of the indictment numbered one to twelve inclusive upon the grounds:

- a) that each count of the indictment is not supported by legal and sufficient evidence before the Grand Jury;
- b) that such evidence that was produced before the Grand Jury was tainted and obtained in violation of the Fourth amendment constitutional rights of the defendant, MANUEL RODRIGUEZ, as owner of the premises mentioned in the indictment in that no warrant of arrest for said MANUEL RODRIGUEZ was obtained, no search warrant was issued for said premises; (any administrative warrant issued by the Immigration and Naturalization Service for the arrest of said aliens and the execution thereof could not diminish or extinguish the constitutionally protected Fourth Amendment rights of the defendant);
- c) that each count fails to charge an offense under Section 1324 (a) (3), Title 18 United States Code in that the indictment fails to disclose the acts and conduct of the defendant, MANUEL RODRIGUEZ, necessary to constitute the "harboring" proscribed by the statute;
- d) that the statute is unconstitutionally vague and indefinite and purports to make criminal the innocent act of rental of residential

premises to aliens on the basis of alleged constructive knowledge of their illegal alien status.

II. Suppressing for use upon the trial of the indictment by the United States Attorney in any manner, shape or form

- a) the production of the aliens mentioned in the indictment as witnesses, any leads furnished by said aliens, any statements, oral or written, furnished by said aliens, any documents, papers, passports, visas or other property seized from said aliens;
- b) any testimony from the Immigration and Naturalization Service Agents or any other governmental employees as to what was observed or heard at the premises mentioned in the indictment at the times mentioned therein;
- c) any administrative warrant issued by the Immigration and Naturalization Service issued in violation of the constitutionally protected Fourth Amendment rights of the defendant.

III. Requiring the United States Attorney serve upon defendant's attorney before trial a bill of particulars of the following items:

- a) Each and every act committed by defendant or the manner in which it will be claimed that the

defendant committed the "harboring" of the aliens mentioned in Counts one to twelve inclusive, separately stating the act or other conduct of defendant as to each such count;

- b) Set forth the manner in which it will be claimed that defendant MANUEL RODRIGUEZ acquired knowledge of the alleged illegal status of the aliens mentioned in counts one to twelve inclusive; if actual knowledge is claimed, the person or persons who gave such knowledge to defendant and the date, time and place thereof, if constructive knowledge is claimed, a general statement of the facts relied upon to constitute the knowledge required by law;
- c) Set forth whether the Immigration and Naturalization Service agents or employees were in possession of an administrative warrant or arrest warrant and if so, furnish a copy thereof together with the supporting depositions or information furnishing the basis for the issuance thereof;
- d) Set forth the names and rank of each and every agent or employee of the Immigration and Naturalization Service participating in or who conducted the arrests of the aliens mentioned in counts one

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to twelve inclusive on February 12, 1975,
also any other governmental agents partici-
pating therein.

- IV. Adjourning the trial of this case until a hearing and
determination of defendant's motion to suppress so that
the defendant may have an opportunity to prepare
properly for trial.

Sufficient reason appearing therefor, ^{by ~~William F. Connelley~~} let service of a
copy of this Order, together with a copy of the papers on which
it is based, upon the United States Attorney for the Eastern
District of New York by ⁵ o'clock P.M. on March 14, 1975,
be deemed good and sufficient service.

Dated: Brooklyn, New York
March 14 1975

Thomas C. Plant
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-against-

MANUEL RODRIGUEZ, a/k/a Manolo
Rodriguez,

AFFIRMATION

Defendant
-----X

ANTHONY F. CORRERI does hereby affirm under the
penalty of perjury as follows:-

I am an attorney at law, duly admitted to practice
in all the courts of the State of New York, having been admitted
to practice at a March 1940 Term of the Appellate Division, First
Department and maintain an office for the practice of my
profession at 50 Mineola Boulevard, Mineola, New York. I am the
attorney for the defendant and have been duly admitted to
practice in the U.S. Eastern District Court.

I submit this affirmation in support of the within
order to show cause for omnibus relief including dismissal or
quashing of the indictment; suppression of evidence, request for
a bill of particulars and an adjournment of the trial, as set
forth in the order to show cause. This affirmation is made upon
information and belief and is based upon the investigation which
I personally made into the facts and law as it applies to the
indictment.

The source of my information consists of con-
versations with Jose Rodriguez and Manuel Rodriguez whose App.13

affidavits are annexed hereto. I also spoke with Jose Portillo, named in count one of the indictment, Assistant U.S. Attorney Paul Corcoran and members of the Immigration and Naturalization Service, while interviewing Jose Portillo at 20 West Broadway, New York City.

BACKGROUND OF CASE

Various articles have appeared in the news media concerning the presence of aliens illegally residing in this country. From press reports it appears that a number of the illegal aliens had concentrated in and were residing in Nassau County. From the newspaper accounts it appears that illegal aliens were arrested from several of the residences owned by a certain Mr. Lopez who has been tried and convicted of a violation of the Immigration Laws. I am advised that his case is presently on appeal and he has questioned the constitutionality of the statute in question.

ARRESTS AND SEARCH

On February 12, 1975 at about 7 A.M. simultaneous raids were conducted by the Immigration and Naturalization Service of premises 18 Bunting Lane, Levittown and 113 Brittle Lane, Hicksville, New York. The purpose of the so-called raids by the Immigration Service was to "search and deport" the illegal aliens found in the said premises. From my conversation with Jose Portillo (named in count one of the indictment) I ascertained the following:

He was at premises 18 Bunting Lane, Levittown, New

York on February 12, 1975. He occupied a bedroom on the second floor. He shared the bedroom with Jesus Portillo (named in count three of the indictment). He is acquainted with the defendant but did not remember the month or year of his arrival into the United States but believes it was 1973. He received mail at this address and was employed on February 12, 1975. He worked for Federal Casting Corp., Plainview, New York and his girlfriend found the job for him. He was working there under his true and correct name, namely, Jose Portillo.

On February 12, 1975 at about 7:05 P.M. he was getting ready for work. There were approximately three or four officers from the Immigration Service. He was in the bedroom when he saw them. They showed him a badge. They never showed him any papers then or later and never showed him papers for his arrest. The officers then asked for his passport and he showed the passport from El Salvador in the name of Jose Portillo. He obtained this from the Consul of his country. The defendant never saw the passport. He received numerous letters from his parents, brothers and sisters addressed to him from El Salvador and using his correct name. The mail was dropped into a slot in the door and placed on a table in the living room and was later picked up by him. No contact was had by him with Immigration Service prior to February 12, 1975. He has a bank account with the Long Island Trust Co., account #12-12625 in his name, Jose Portillo, and there was on deposit as of January 27, 1975 the sum of \$32.49. The passbook was exhibited to me by him.

There was also furnished to me by Assistant U.S. Attorney Paul Corcoran a photocopy of the statement made by Jose Portillo dated February 12, 1975. The alien also advised me that he had appeared before the Grand Jury. He is unable to sign his name but did place his initials upon the statement.

From my conversations with the said Jose Portillo, I have concluded that no search warrant or warrant of arrest was in the possession of the immigration officers on February 12, 1975 at the time of their contact with the premises. Further, from my conversations with Assistant U.S. Attorney Paul Corcoran, he did not have in his file any warrant of arrest or search warrant but stated that it is possible that the Immigration Service had an administrative warrant in this case but was unable to furnish me with any further information. I have therefore deemed it advisable to request a bill of particulars, that I be furnished with a copy, if any, of the administrative warrant or warrants which may have been issued by the Immigration & Naturalization Service in this case.

From my conversations with Jose Rodriguez, I have concluded that no search warrant was ever obtained in this case or warrant for the arrest of the defendant; further, that no consent or authority was obtained from the defendant to search the premises mentioned in the indictment. I have also concluded that the defendant had a constitutional right, as owner of the premises mentioned in the indictment, to be secure in the said premises and to be free from any illegal or unreasonable search and seizure. The essential substantive element of the crime

charged in the indictment required proof of "harboring". Such proof consisted of locating the aliens in the premises mentioned in the indictment, ascertaining their identity and also their status as legal or illegal aliens in this country. This substantive element therefore was sought to be established by virtue of the physical search of the aforesaid premises by the Immigration and Naturalization Service agents. From my knowledge of the conduct of the agents, it was apparent that they were not seeking any alien by specific name. Any person on the premises who spoke Spanish and who appeared to be of Spanish origin was detained, questioned and released only after such persons were able to satisfy the immigration service agents by documentary evidence that they were legally and lawfully in this country. Mass arrests were made at premises 18 Bunting Lane, Levittown (See counts one to nine for the names of aliens arrested) and three aliens arrested at 113 Brittle Lane, Hicksville, N.Y. (See counts ten to twelve). The method and manner of the conduct of the immigration agents indicate that the operation had been planned in detail. The element of surprise was considered in making their entrance into the said premises simultaneously at 7 o'clock when it would be assumed that the people therein were either sleeping or had not yet left for employment. The husband and wife who were stopped at the door of 113 Brittle Lane secured their release only after exhibiting a marriage license and satisfying the immigration agents ~~that~~ their country of origin was Porto Rico or otherwise legally in this country. The so-called dragnet type of operation carried on in private premises owned by the defendant without a search warrant appears to be clearly in violation of his con-

stitutional rights under the Fourth Amendment.

THE GRAND JURY PROCEEDINGS & THE INDICTMENT

From my conversations with the Immigration and Naturalization agents, it appears that not all of the aliens mentioned in counts one to thirteen of the indictment appeared as witnesses before the Grand Jury. While statements were furnished to me by each of the aliens mentioned in the indictment, nevertheless it was indicated to me that only two of the aliens appeared before the Grand Jury, namely, Jose Portillo (count one) and Jose Caballero-Flores (count 2). Thus, counts three to thirteen are unsupported by any testimony of the aliens mentioned before the Grand Jury. Sufficient evidence to sustain these counts (three to twelve) was required. I believe, therefore, that the sole evidence to sustain counts three to twelve was the testimony of the Immigration agents or other governmental officers who testified as to the activities which transpired at the premises named in the indictment on February 12, 1975. Since the defendant was not present and made no admissions, the agents could have no information from the defendant that he knew of the illegal alien status of such persons. Further, since this is an essential element of the crime, namely, knowledge of the illegal alien status of the aliens mentioned, the information before the Grand Jury is believed to be insufficient in this regard. The proof of the other substantive element required, namely, acts and conduct constituting the "harboring" proscribed by the statute, was also lacking particularly since the evidence before the Grand Jury fails to establish a "clandestine harboring" which has been the

interpretation placed upon the word "harboring" by decisional law.

As to counts three to twelve, the immigration agent may have testified to conversations with the aliens mentioned therein and substantially in accordance with the statements taken from the aliens and which were furnished to me. From the aliens' statements furnished to me it appears nowhere that there was any "clandestine harboring" of these aliens by the defendant. The evidence therefore before the Grand Jury appears to be insufficient as a matter of law to support the indictment. There is ample authority to support the proposition that insufficient evidence before the Grand Jury warrants a dismissal or quashing of the indictment. The indictment is also attacked on the ground that the evidence submitted to the Grand Jury consisted of tainted evidence which is properly the subject of a motion to suppress inasmuch as the evidence was obtained in violation of the Fourth Amendment, constitutionally protected rights of the defendant. There is ample authority to support on such grounds the dismissal or quashing of the indictment.

PROCEEDINGS SUBSEQUENT TO THE INDICTMENT

The alleged crime was committed on February 12, 1975. Evidence was submitted by the U.S. Attorney to the Grand Jury on February 13, 1975 when an indictment was handed up against this defendant. He was required to appear in the Eastern District Court by notice mailed to him at 8 Butler Lane, Levittown, New York which was received on February 17, 1975 requiring his appearance before

the court on February 19, 1975 and an adjournment was obtained to February 20, 1975 when he appeared with me as his counsel. A plea of not-guilty was entered in his behalf, a personal security bond of \$25,000. was demanded and filed and security posted in the form of a deed to premises 113 Brittle Lane, Levittown, New York. Defendant is presently at liberty.

At the time of defendant's arraignment, I informed the court that the earliest I could be ready for trial in this matter would be within sixty days since numerous witnesses had to be questioned and exhaustive legal research was required and since I am a sole practitioner, that I would not be able to properly defend this defendant unless such sixty day delay was afforded to me. The matter was assigned for trial to Judge Platt who advised me that the matter would be placed on the Friday calendar for March 7, 1975 and that I should be prepared to proceed to trial on March 10, 1975. I was not aware that my presence and that of my client was required on March 7, 1975 and did, however, appear and renewed my motion to delay the trial of this matter reciting the reasons hereinabove stated. The matter was then placed on the Friday calendar for March 21, 1975 and was placed on the calendar for trial for March 24, 1975.

I am proceeding at this time by way of order to show cause since insufficient time remains for me to proceed by way of notice of motion and further, that the court indicated that any motion addressed to the sufficiency of the indictment or bill of particulars, etc. should be brought on by way of order to show cause. No previous application for the within

WHEREFORE, I respectfully ask that the motion be granted in all respects, that the indictment be dismissed, or in the alternative, a hearing ordered on the motion to suppress after service of a bill of particulars and that the trial of this case be adjourned until after a decision has been made on the within motion.

ANTHONY F. CORRERI

Dated: Mineola, New York
March 13, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA

-against-

AFFIDAVIT

MANUEL RODRIGUEZ, a/k/a Manolo
Rodriguez,

Defendant

-----x

STATE OF NEW YORK)

)ss:

COUNTY OF NASSAU)

JOSE RODRIGUEZ being duly sworn, deposes and says:

I reside at premises 113 Brittle Lane, Hicksville, NEW York. The premises consists of a one family residence consisting of a living room, kitchen, bath and upstairs bedrooms. I reside in one of the upstairs bedrooms. The sole owner of the property is my brother, Manuel Rodriguez, the defendant.

On February 12, 1975 at about 7 A.M. I was at the premises and sleeping in the bedroom. I was later informed that two of the occupants of the premises were on their way to work when they were stopped at the outside door by persons who were later identified as agents of the Immigration and Naturalization Service. These persons were not permitted to exit but were pushed back into the premises and questioned at some length with regard to their alien status and only after intensive questioning were they subsequently released. I was awakened by some hollering downstairs and the door to my bedroom was closed but not

locked. A person entered into my bedroom and immediately started to question me. The person stated to me - "I am an immigration officer". I put on my pajamas. The officer then questioned me as to my country of birth and when I came to this country. He demanded proof that I was legally in the country. I showed him my citizenship papers. He copied the information on a pack of cigarettes and told me that I should remain until after he had made a phone call to check on my papers. There were other immigration officers in the building at the same time. There was another bedroom upstairs and I could hear the officer pounding on the door. The door was locked. The officer tore a gaping hole in the wall of the bedroom and then tore the frame away from the door. There was someone asleep in the bedroom who finally came out. The officer yelled - "he got away" and there was a big commotion. I was told - "stay where you are". There were three other men in the premises and handcuffs were placed on them. I was never shown any papers of any kind or nature whatsoever by the officers to permit them into the house or my bedroom. I was not taken into custody. I later learned that the officers arrived in two cars. They parked their cars diagonally across the street portion of the roadway so as to prevent any cars from coming in or out of Brittle Lane.

After this incident, I decided to call on my brother who was then living at 8 Butler Lane, Levittown, New York. On my way to see him I stopped at 18 Bunting Lane, Levittown, New York and noticed the outside door was completely open. There was a very serious storm and snow and wind was caused to go into the premises.

There was no one in the premises and I later learned that the immigration officers had been to these premises at about 7 A.M. and had taken from the premises and arrested nine individuals. I also noticed doors were broken, tables were upside down and the lights were on in the house and everything seemed to be in a state of disarray. From the information which I had, I believe that other immigration officers came to these premises, 113 Brittle Lane, Hicksville, New York the same time as other officers came to 18 Bunting Lane. I believe that these other immigration officers used the same method of entering 18 Bunting Lane because of the condition in which I found the premises and at no time was I ever shown any papers by way of a warrant of arrest or search warrant.

Sworn to before me this

19 day of March 1975

RUTH ALTMAN
NOTARY PUBLIC, State of New York
No. 30-20000
Qualified in Nassau County
Term Expires March 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

-against-

AFFIDAVIT

MANUEL RODRIGUEZ, a/k/a Manolo
Rodriguez,

Defendant

-----X

STATE OF NEW YORK)

) SS:

COUNTY OF NASSAU)

MANUEL RODRIGUEZ being duly sworn, deposes and says:

I am the defendant in the above entitled action and reside at 8 Butler Lane, Levittown, New York. I am the sole owner of premises 113 Brittle Lane, Hicksville, New York (premises mentioned in counts 11 to 13 in the indictment) and the sole owner of premises 18 Bunting Lane, Levittown, New York (mentioned in counts 1 to 10 in the indictment). Both of the premises consist of a parcel of approximately 50 x 100, improved by a one family residence thereon. Access to the premises is gained along a short walk to the front door. The premises consists of a living room, kitchen, bathroom and several bedrooms. I have from time to time rented bedroom accommodations on a weekly basis to various persons. I intend to controvert at the trial any evidence that I knew of the illegal alien status of the persons mentioned in the indictment in counts 1 to 13.

I was not present at the time the immigration agents

came to premises 18 Bunting Lane, Levittown, New York and 113 Brittle Lane, Hicksville, New York. My knowledge of what happened on February 12, 1975 is derived from my brother, Jose Rodriguez and I believe that the information he furnished is correct.

I am submitting this affidavit in support of the motion to dismiss or quash the indictment, to suppress the evidence obtained by the immigration officers, as more fully set forth in the order to show cause and the affirmation of my attorney, ANTHONY F. CORRERI, ESQ. and also to request a bill of particulars and an adjournment of the trial.

I was never contacted before the contact was made by immigration officers on February 12, 1975 of the premises owned by me and mentioned in the indictment and I was never shown, either prior or subsequent to February 13th, any arrest warrant or search warrant.

I feel that I am not guilty of any criminal conduct and respectfully ask that the motion be in all respects granted.

Sworn to before me this

14 day of March 1975

RUTH ALTMAN
NOTARY PUBLIC, New York
No. 30 077 1
Qualified in Nassau County
Term Expires March 30, 1976

OPINION OF JUDGE PLATT IN DENYING
MOTION TO SUPPRESS AND TO DISMISS
INDICTMENT

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2 THE COURT: My feeling on the subject
3 as I indicated earlier runs roughly as follows:

4 I do not really, and I say this by way
5 of dicta, subscribe to the last argument of the
6 government. On the standing issue by way of
7 dicta since I do not have to pass upon it, my
8 present inclination would be to think Mr. Rodriguez
9 had a standing but with respect to the consent
10 of Mr. Ortiz in the light of what I am going to
11 say I do not think it is necessary for me to
12 pass upon it. I do not think there is any
13 question but that the agents had the consent of
14 Mr. Ortiz. To what extent that consent constituted
15 turning whatever happened into something legal,
16 as to what extent he had authority to give consent
17 in the premises, I do not think it is necessary
18 for me to pass upon.

19 Based upon my reading of the cases I
20 see it roughly as follows and based upon the
21 evidence produced here. I do not find and I
22 do not think it is sufficient evidence to verify
23 Rodriguez was the target of this investigation.
24 I think it is clear Mr. Jacobs knew that Mr.
25 Rodriguez was the owner and he checked that fact

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2 out. But his purpose in assembling agents
3 was not to go out and have eight agents
4 available to arrest Mr. Rodriquez. His purpose
5 was to go out and make an investigation to
6 determine if there were any illegal aliens on
7 the two premises and I sincerely doubt whether
8 Mr. Rodriquez per se was the target at that
9 point. There was no file shown on him. There
10 was nothing really to substantiate Mr. Rodriquez
11 was the specific target prior to February or on
12 the afternoon of February 12, after the
13 interrogations took place.

14 It seems clear to me under § U.S.C.
15 Section 1357 (a-1) that the officers or employees
16 of the Immigration and Naturalization Service
17 have the power without warrant to interrogate
18 any alien or person believed to be an alien as
19 to his right to be or remain in the United States.

20 In the cases, even in the cases that
21 have been furnished to me by Mr. Correrri, counsel
22 for the defendant, over the years they have borne
23 out this right and have repeated it under various
24 circumstances even to the extent of saying that
25 the agents can surround a restaurant and block

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2 all the exits and go in and make an interrogation
3 and that will not be deemed to be an arrest
4 prior to the interrogation and the ascertainment
5 as to whether the person is an unlawful alien.

6 In the case at bar the first event that
7 appears to have happened in point of time was
8 Mr. Jacobs' interrogation of an alien in the
9 automobile parked on the street in front of
10 Bunting Lane or the house on Bunting Lane. He
11 certainly had under that section of the statute
12 the authority to go up and interrogate that
13 alien. During that interrogation I find that he
14 determined that such person was an illegal alien.
15 At that point it seems to me he had probable
16 cause to arrest that alien and to accompany him
17 to attain whatever he chose to obtain from the
18 dwelling in which he was living, which he claimed
19 he lived in and where he said his passport
20 substantiating certain of his claims existed.
21 After that it seems to me it all follows
22 quite logically that once inside he saw another
23 person who looked like an alien and he had
24 authority to interrogate that alien and that
25 from there arose probable cause to arrest that

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2 alien and so forth with respect to each
3 succeeding alien.

4 I also find and I think that the
5 government had reasonable suspicion to make
6 the first interrogation of the alien in the
7 car and may well have even had the right to
8 arrest and detain at least temporarily the
9 alien in the car and possibly one more person
10 in the building based on such reasonable
11 suspicion under the authority, although I do
12 not think it is necessary that such suspicion
13 exist.

14 With respect to the Brittle Lane
15 premises, 113 Brittle Lane, I think the evidence
16 shows quite clearly that the purpose of the
17 Service here was not to invade the premises in
18 question in violation of anyone's Fourth Amendment
19 rights. When Mr. Pappas and his co-officers
20 arrived at that premises they parked their cars
21 at 7:00 o'clock outside the premises and they
22 waited there according to Mr. Pappas for thirty-
23 five minutes, I guess it was according to him
24 for thirty minutes.

25 If the defense contention is true that

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2 this was for the sole purpose of violating
3 the Fourth Amendment rights of the defendant
4 and/or these aliens this action on their part
5 was wholly inconsistent therewith. They
6 awaited someone's attempted departure from
7 the premises. They interrogated that person
8 or persons under 8 U.S.C. Section 1357-A and
9 found that one of the persons was an illegal
10 alien in the sense that she had come into the
11 country illegally and she was presently married
12 to a United States citizen who was petitioning
13 to have her remain. In order to check out the
14 veracity of that claim they accompanied that
15 person into the premises and then they received
16 the husband's permission to search the balance
17 of the premises and also received information
18 from him, and this of course is the key, there
19 were on the premises three illegal aliens. At
20 this point they clearly had probable cause to
21 believe there were three illegal aliens. He
22 had information from a person in daily contact
23 with those three illegal aliens so they had
24 probable cause to arrest any such alien and, of
25 course, had reason to believe that such persons

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were in the premises.

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Under the circumstances and on that ground and without passing on the standing issue or without passing specifically on the question of consent by Mr. Correrì I think the defendant's motion must be denied.

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With respect to the defendant's motion insofar as a bill of particulars is concerned I think as we discussed at a prior occasion in view of all that has been obtained during the course of the hearing it is for the most part academic and so I will propose to start the trial at 2:15 this afternoon.

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19

MR. CORRERI: If your Honor please I do not want the record to reflect that I have abandoned any part or portion of my motion particularly insofar as it raises the question of constitutionality.

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21

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THE COURT: I was passing on the constitutionality in that brief off-the-cuff opinion I just gave.

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MR. CORRERI: Yes, your Honor. And I just want the record to indicate since I did not address myself to it that I am not abandoning

CHARGE TO THE COURT

Corcoran summation

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2 aliens and knowing they were illegal aliens, he
3 gave them shelter, lodging; he harbored them.

4 Ladies and gentlemen, under those circum-
5 stances, Mr. Rodriguez is guilty as charged. Thank
6 you.

7 THE COURT: Now that you have heard the evi-
8 dence and the argument, it becomes my duty to give
9 the instructions of the Court as to the law applic-
10 able to this case.

11 It is your duty as jurors to follow the law
12 as stated in the instructions of the Court and to
13 apply the rules of law as given to the facts as you
14 find them from the evidence in the case. You are
15 not to single out one instruction alone as stating
16 the law, but must consider the instructions as a
17 whole. Neither are you to be concerned with the
18 wisdom of any rule of law as stated by the Court.
19 Regardless of any opinion you may have as to what
20 the law ought to be, it would be a violation of
21 your sworn duty to base the verdict upon any other
22 view of the law than that given in the instructions
23 of the Court, just as it would be a violation of
24 your sworn duty as judges of the fact to base a
25 verdict upon anything but the evidence in the case.

1
2 You must not permit yourselves to be
3 governed by sympathy, bias, prejudice or any other
4 considerations not founded on evidence and these
5 instructions on the law...

6 Justice through trial by jury must always
7 depend upon the willingness of each individual juror
8 to seek the truth as to the facts from the same
9 evidence presented to all of the jurors and to
10 arrive at a verdict by applying the same rules of
11 law as given in the instructions of the Court.

12 You have been chosen and sworn as jurors in
13 this case to try the issues of fact presented by the
14 allegations of the indictment and the denial made
15 by the "not guilty" plea of the accused. You're to
16 perform this duty without bias or prejudice as to
17 any party. Again, the law does not permit jurors
18 to be governed by sympathy, prejudice or public
19 opinion. Both the accused and the public expect that
20 you will carefully and impartially consider all the
21 evidence in the case, follow the law as stated by
22 the Court, and reach a just verdict regardless of
23 the consequences.

24 I am not sending the exhibits which have been
25 received in evidence with you as you retire for your

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2 deliberations. You are, however, entitled to see
3 any or all of the exhibits as you consider your
4 verdict. I suggest that you begin your deliberations
5 and then if it would be helpful to you, you may ask
6 for any or all of the exhibits simply by sending a
7 note to me through one of the deputy marshals..

8 An indictment is but a form or method of
9 accusing a defendant of a crime. It is not evidence
10 of any kind against the accused.

11 There are two types of evidence from which a
12 jury may properly find a defendant guilty of a crime.
13 One is direct evidence, such as the testimony of an
14 eyewitness; the other is circumstantial evidence,
15 the proof of facts and circumstances which rationally
16 imply the existence or nonexistence of other facts
17 because such other facts usually follow according to
18 the common experience of mankind. Thus, by way of
19 example, the footprint of a man in the sand implied
20 to Robinson Crusoe there was another man with him
21 on the desert island, and indeed there was, the man
22 Friday.

23 Thus, on the one hand, you may have direct
24 evidence of the issue, and on the other hand you may
25 have circumstantial evidence of the issue. The law

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2 does not hold that one type of evidence is necessarily
3 of better quality than the other. The law requires
4 only that the Government prove its case beyond a
5 reasonable doubt both on the direct and the circum-
6 stantial evidence.

7 At times the jury may feel that circumstantial
8 evidence is of better quality. At other times they
9 may feel direct evidence is of better quality. That
10 judgment is left entirely up to you. As a general
11 rule, the law makes no distinction between direct
12 and circumstantial evidence, but simply requires
13 that before convicting a defendant the entire jury
14 be satisfied of the defendant's guilt beyond a reason-
15 able doubt from all the evidence in the case.

16 The law presumes a defendant to be innocent
17 of crime. Thus a defendant, although accused,
18 begins the trial with a clean slate, with no evidence
19 against him. The law permits nothing but legal
20 evidence presented before the jury to be considered
21 in support of any charge against the accused. So
22 the presumption of innocence alone is sufficient to
23 acquit a defendant unless the jurors are satisfied
24 beyond a reasonable doubt of the defendant's guilt
25 after careful and impartial consideration of all the

evidence in the case.

The burden is also upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon the defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt does not mean a doubt arbitrarily and capriciously asserted by a juror because of his or her reluctance to perform an unpleasant task. It doesn't mean a doubt arising from the natural sympathy we have for others. It is not necessary for the Government to prove the guilt of the defendant beyond all possible doubt, because if that were the rule, very few people would ever be convicted. It is practically impossible for a person to be absolutely sure and convinced of any controverted fact which by its nature is not susceptible of mathematical certainty. In consequence the law says a doubt should be a reasonable doubt, not a possible doubt.

A reasonable doubt is a doubt based upon reason and common sense, the kind of doubt that would make a reasonable person hesitate to act.

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2 Proof beyond a reasonable doubt must therefore be
3 proof of such a convincing character that you would
4 be willing to rely and act upon it unhesitatingly
5 in the most important of your own affairs.

6 The jury will remember that a defendant is
7 never to be convicted on mere suspicion or conjecture.
8 Again, a reasonable doubt means a doubt sufficient
9 to cause a prudent person to hesitate to act in the
10 most important affairs of his or her life.

11 The statute alleged to have been violated in
12 this case is Section 1324(a)3 of Title 8 of the
13 United States Code, which provides in pertinent part
14 that "Any person who willfully or knowingly harbors
15 or attempts to harbor in any place, including any
16 building, any alien not duly admitted by an immigra-
17 tion officer or not lawfully entitled to enter or
18 reside within the United States shall be in violation
19 of the law." That statute has a proviso exception,
20 which I will also read to you because there has been
21 some testimony about employers in this case, namely...
22 "provided, however," that for the purpose of this
23 section employment, including the usual and normal
24 practices incident to employment, shall not be
25 deemed to constitute harboring."

1
2 It is charged in Count 1 of the indictment--
3 and, as I have heretofore indicated to you, each of
4 the remaining counts is the same except for the name
5 of the alien and in the last three counts the
6 address, and except, of course, Count 8 has been
7 withdrawn--it is charged in Count 1 that on or about
8 February 12th, 1975, within the Eastern District of
9 New York, the defendant Manuel Rodriguez, also known
10 as Manolo Rodriguez, did willfully and knowingly
11 harbor at 18 Bunting Lane, Levittown, New York, one
12 Jose Portillo, an alien not lawfully entitled to
13 reside within the United States, as Manuel Rodriguez,
14 also known as "Manolo Rodriguez, then knew."

15 The essential elements of the crime charged
16 in each of the eleven counts of the indictment which
17 must be proved beyond a reasonable doubt are as
18 follows: 1) that the defendant harbored the desig-
19 nated person at the stated address, 2) that the
20 defendant did so willfully and knowingly, 3) that
21 such person was an alien not lawfully entitled to
22 reside within the United States, and 4) that the
23 defendant then knew that such person was an illegal
24 alien. X X

25 The definition of harboring is defined by

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2 Webster's New International Dictionary, Second
3 Edition, Unabridged, as "To afford lodging to, to
4 entertain as a guest, to shelter, to receive or
5 give a refuge to, now usually with reference to evil,
6 especially unlawful act or intent."

7 An act is done knowingly if done voluntarily
8 and intentionally and not because of mistake or
9 accident or other innocent reason. The purpose of
10 adding the word "knowingly" to the statute was to
11 insure that no one would be convicted for an act
12 done because of mistake or accident or other innocent
13 reason.

14 You remember the language is "knowingly or
15 willfully harbor." An act is done willfully if done
16 voluntarily and intentionally and with the specific
17 intent to do something the law forbids; that is to
18 say, with bad purpose either to disobey or disregard
19 the law.

20 One of the elements of the crime charged is
21 that the defendant then knew that the designated
22 person charged in each of the indictments was an alien
23 not lawfully entitled to reside within the United
24 States. As I have instructed you, that must be
25 proven beyond a reasonable doubt. Knowledge is

1 something that you cannot see with the eye or touch
2 with the finger. It is seldom possible to prove it
3 by direct evidence. The Government relies largely
4 on circumstantial evidence in this case to establish
5 knowledge.
6

7 In deciding whether this defendant knew that
8 the designated persons were aliens not lawfully
9 entitled to reside within the United States, you
10 should consider all the circumstances, such as how
11 the defendant handled the whole matter, how he con-
12 ducted himself, and so forth. Do his actions portray
13 guilty knowledge that he was dealing with illegal
14 aliens or are his actions those of a duped, innocent
15 man?

16 Guilty knowledge cannot be established by
17 demonstrating mere negligence or even foolishness
18 on the part of the defendant. Knowledge that the
19 defendant then knew that the designated persons were
20 illegal aliens may be inferred from circumstances
21 that would convince a man of ordinary intelligence
22 that such was the fact.

23 The element of knowledge may be satisfied
24 by proof that the defendant deliberately closed his
25 eyes to what otherwise would have been obvious to him.

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2 Thus, if you find that the defendant acted with
3 reckless disregard of whether the designated persons
4 were illegal aliens and with a conscious purpose to
5 avoid learning the truth, the requirement of knowledge
6 would be satisfied unless the defendant actually
7 believed that they were not illegal aliens. In this
8 connection, you should scrutinize the entire conduct
9 of the defendant.

10 Knowledge and intent ordinarily may not be
11 proved directly because there is no way of fathoming
12 or scrutinizing the operations of the human mind.
13 But you may infer a defendant's knowledge and intent
14 from the surrounding circumstances. You may consider
15 any statement made and done or omitted by a defendant
16 and all other facts and circumstances in evidence
17 which indicate his state of mind. It is ordinarily
18 reasonable to infer that a defendant intends the
19 natural and probable consequences of acts knowingly
20 done or knowingly omitted.

21 Statements, arguments of counsel are not
22 evidence in the case unless made as admissions or
23 stipulations of fact. When the attorneys on both
24 sides stipulate or agree as to the existence of a
25 fact, such as I believe they stipulated that the

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2 defendant was the owner of three houses, 18 Bunting
3 Lane, 113 Brittle Lane, and one other piece of
4 property, you must, unless otherwise instructed,
5 accept the stipulation as evidence and regard that
6 fact as proved.

7 The Court may take judicial notice of certain
8 facts or events. When the Court declares it will
9 take judicial notice of some fact or event, you
10 may accept the Court's declaration as evidence and
11 as proof of the fact or event which has been
12 judicially noticed, but you're not required to do so
13 since you are the sole judges of the facts.

14 Unless otherwise instructed, the evidence in
15 the case always consists of the sworn testimony of
16 the witnesses regardless of who may have called
17 them, and all exhibits received in evidence regardless
18 of who may have produced them, and all facts which
19 may have been admitted or stipulated and all facts
20 and events which may have been judicially noted and
21 all applicable presumptions stated in these in-
22 structions. Any evidence as to which an objection
23 has been sustained by the Court and any evidence
24 ordered stricken by the court must be entirely
25 disregarded.

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2 Evidence does include, however, what is
3 brought out from witnesses on cross-examination as
4 well as that which is testified to on direct
5 examination. Unless you are otherwise instructed, ..
6 anything you may have seen or heard outside the
7 courtroom is not evidence and must be entirely dis-
8 regarded. You must consider only the evidence in
9 the case and your verdict is to be based on the
10 evidence only, but in your consideration of the
11 evidence you are not limited to the bald statements
12 of the witnesses. In other words, you are not
13 limited solely to what you see and hear as the
14 witnesses testify. You are permitted to draw from
15 facts which you find have been proved such reason-
16 able inferences as you feel are justified in the
17 light of your experience.

18 Inferences are deductions or conclusions which
19 reason and common sense lead the jury to draw from
20 facts which have been established by the evidence in
21 the case. If a lawyer asks a question which con-
22 tains an assertion of fact, you may not consider
23 the assertion as evidence of that fact. The lawyer's
24 statements are not evidence.

25 You as jurors are the sole judges of the

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2 credibility of the witnesses and the weight their
3 testimony deserves. You should carefully scrutinize
4 all the testimony given, the circumstances under
5 which each witness has testified, and every matter
6 in evidence which tends to show whether a witness
7 is worthy of belief. Consider each witness's
8 intelligence, motive and state of mind and demeanor
9 and manner while on the stand. Consider the wit-
10 ness's ability to observe the matters as to which he
11 or she has testified and whether he or she impresses
12 you as having an accurate recollection of these
13 matters. Consider also any relation each witness
14 may bear to either side of the case; the manner in
15 which each witness might be affected by the verdict
16 and the extent to which, if at all, each witness
17 is either supported or contradicted by other
18 evidence in the case.

19 Inconsistencies or discrepancies in the
20 testimony of a witness or between the testimony of
21 different witnesses may or may not cause the jury to
22 discredit such testimony. Two or more persons
23 witnessing an incident or transaction may see or
24 hear it differently, and innocent misrecollection
25 like failure of recollection is not an uncommon

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2 experience.

3 In weighing the effect of a discrepancy,
4 always consider whether it pertains to a matter of
5 importance or unimportant detail, and whether the
6 discrepancy results from innocent error or inten-
7 tional falsehood. After making your own judgments,
8 you will give the testimony of each witness such
9 credibility, if any, as you may think it deserves.

10 The testimony of a witness may be discredited
11 or impeached by showing that he or she previously
12 made statements which are inconsistent with his or
13 her present testimony. The earlier contradictory
14 statements are admissible only to impeach the
15 credibility of the witness and not to establish the
16 truth of those statements. It is the province of
17 the jury to determine the credibility, if any, to
18 be given the testimony of a witness who has been
19 impeached.

20 If a witness is shown knowingly to have
21 testified falsely concerning any material matter,
22 you have a right to distrust such witness's testimony
23 in any other particulars. You may reject all the
24 testimony of that witness or give it as much
25 credibility as you think it deserves.

It is the duty of the attorney on each side of the case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections. By allowing testimony or other evidence to be introduced over the objection of an attorney, the court does not, unless specifically stated, indicate any opinion as to the weight or effect of such evidence. As stated before, you are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

App. 48

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2 what the witness would have said if he had been
3 permitted to answer any question.

4 The fact that the Court has asked one or more
5 questions of a witness for clarification or admis-
6 sibility of evidence purposes, is not to be taken by
7 you in any way as indicating that the Court has any
8 opinion as to the guilt or innocence of the defendant
9 in this case and you are to draw no such inference
10 therefrom. The guilt or innocence determination is
11 up to you and you alone based on all of the facts in
12 this case and the applicable law as stated in these
13 instructions.

14 You are here to determine the guilt or inno-
15 cence of the accused from the evidence in the case.
16 You are not called upon to return a verdict as to
17 the guilt or innocence of any other person or
18 persons. So if the evidence in the case convinces
19 you beyond a reasonable doubt of the guilt of the ac-
20 cused, you should so find, even though you may believe
21 one or more persons are guilty, but if any reasonable
22 doubt remains in your minds after impartial consider-
23 ation of all the evidence in the case, it is your
24 duty to find the accused not guilty.

25 The verdict must represent the considered

1 judgment of each juror. In order to return a verdict
2 it is necessary that each juror agree thereto. Your
3 verdict must be unanimous. It is your duty as
4 jurors to consult with one another and to deliberate
5 with a view to reaching an agreement, if you can do
6 so without violence to individual judgment. Each of
7 you must decide the case for himself and herself. Do
8 so only after an impartial consideration of the evi-
9 dence in the case with your fellow jurors.

10
11 In the course of your deliberations do not
12 hesitate to re-examine your own views and change
13 your position if convinced it is erroneous, but do
14 not surrender your honest convictions as to the weight
15 or effect of evidence solely to harmonize with the
16 opinion of your fellow jurors or for the mere purpose
17 of returning a verdict.

18 If any reference by the Court or by counsel
19 to matters of evidence does not coincide with your
20 own recollection, it is your recollection which
21 should control during your deliberations.

22 The punishment provided by law for the offenses
23 charged in the indictment is a matter exclusively
24 within the province of the Court and should never
25 be considered by the jury in any way in arriving at

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2 an impartial verdict as to the guilt or innocence
3 of the accused.

4 Upon retiring to the jury room, the juror
5 seated closest to me, the No. 1 juror, will act as
6 your foreman unless he declines to do so. If he
7 declines to do so, you will elect a foreman from
8 amongst your number. The foreman will preside over
9 your deliberations and will be your spokesman here
10 in court.

11 Remember at all times you are not partisans,
12 you're judges, judges of the facts. Your sole inter-
13 est is to seek the truth from the evidence in the case.
14 There is nothing peculiarly different in the way that
15 a jury should consider the evidence in a criminal
16 case from that in which all reasonable persons treat
17 any question depending upon evidence presented to
18 them. You are expected to use your good common
19 sense, consider the evidence in the case for only
20 those purposes for which it has been admitted
21 and give it a reasonable and fair construction in
22 the light of your common knowledge of the natural
23 tendencies and inclinations of human beings.

24 If the accused be proved guilty beyond a
25 reasonable doubt, say so; if not so proved guilty,

say so.

You must render a verdict with respect to each of the eleven remaining counts in the indictment that I have described to you. As you have noted or as I have noted, a separate crime or offense is charged in each count of the indictment. Each offense and the evidence applicable thereto should be considered separately. The fact that you may find the accused guilty or not guilty as to one of the offenses charged should not control your verdict necessarily as to the other offenses charged.

If it becomes necessary during your deliberations to communicate with the Court; you may send a note by a deputy marshal, signed by your foreman or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject matter touching the merits of the case otherwise than in writing or orally here in open court.

You will note from the oath which will be administered shortly to the deputy marshals that they, too, as well as all other persons, are forbidden to

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2 communicate in any way or manner with any member
3 of the jury on any subject touching the merits of
4 the case. Bear in mind also that you are never to
5 reveal to any person, not even to the Court, how the
6 jury stands numerically or otherwise on the question
7 of the guilt or the innocence of the accused until
8 after you have reached a unanimous verdict.

9 Now, ladies and gentlemen, I'm going to let you
10 retire briefly to the jury room while I have a dis-
11 cussion with the attorneys in the case, and then
12 I'll recall you. The alternates will be discharged
13 and then you will be given the case for ultimate
14 deliberation. In the meanwhile, during this five-
15 minute recess, while I discuss matters with the
16 attorneys, don't discuss the case. Don't begin your
17 deliberations. Wait until you have been recalled
18 to get the final word. Don't discuss the case.

19 (The jury leaves the courtroom.)

20 THE COURT: Mr. Corcoran?

21 MR. CORCORAN: Yes, sir.

22 THE COURT: Do you take any exceptions to any
23 portion of the charge?

24 MR. CORCORAN: No. I should have requested
25 a charge with regard to knowledge and intent that

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2 they can use one count for purposes of establishing
3 knowledge and intent. I have no objection to the
4 charge as it stands.

5 MR. CORRERI: Your Honor, I would take excep-
6 tion to your refusal to charge Request No. 1, and
7 I would take exception to your Honor's charge insofar
8 as knowingly to act, under Request No. 4, the third
9 sentence in my request to charge, which was omitted.
10 "As stated before, with respect to an offense such
11 as charged in this case, specific intent must be
12 proved before there can be a conviction."

13 THE COURT: I gave that as part of the "willful"
14 charge, almost immediately thereafter:

15 MR. CORRERI: I also take exception to your
16 Honor's refusal to charge Request No. 5, particularly
17 as it concerns the question of whether the accused
18 acted or failed to act with specific intent as
19 charged.

20 THE COURT: If there was evidence in your case
21 I would have given that charge, including the "however"
22 language. Since there has been no evidence on your
23 case, I think the only proper part for me to give
24 would be the first two sentences. I don't think you
25 would want that. That being the fact, I left it out

1
2 entirely, as I told you this morning.

3 MR. CORRERI: Then I would also take exception
4 to your Honor's charge insofar as it relates to a
5 duped, innocent man, the language which was quoted.

6 THE COURT: I said "duped or innocent man,"
7 I think.

8 MR. CORRERI: That isn't the way I heard it,
9 but that doesn't mean to say that isn't the
10 situation--

11 THE COURT: I read you that charge a week ago
12 or last week, and you didn't raise any question about
13 it at that point, and I did use the same language
14 then. I think it's proper language, either he's an
15 innocent man or made an innocent mistake. I think
16 I have covered that point pretty well.

17 MR. CORRERI: The other one, of course, is that
18 your Honor appeared to be quoting from 1324(a)3 and
19 you omitted from the statutory language the word
20 which appeared before "harbor," namely, "conceal."

21 THE COURT: I understand that, but the Govern-
22 ment hasn't charged him with concealing. It's
23 charged him with harboring.

24 MR. CORRERI: I believe that, but that's not
25 the statute.

MINUTES OF SENTENCING OF APPELLANT

COLLOQUY

13

THE COURT: I can't waive his disbursements.

MR. CORRERI: The disbursements he had previously incurred, in order for him to take this appeal, Judge, I know that he doesn't have the money to pay me.

THE COURT: This is more liability. It helps him if he has more liabilities than assets.

There is a total of \$51,000, \$52,000 worth of liabilities plus another \$1,000 owing to you, is that right?

MR. CORRERI: And for the car, yes, Judge.

What I say, if this would aid in any way --

THE COURT: No. In fact you ought to list your liabilities on here.

I will direct the Court to go ahead and file a notice of appeal and have the trial transcript made available to whoever the Court of Appeals appoints.

THE CLERK: The fine is to be paid by September pending the --

THE COURT: I will suspend the imposition of sentence and I will stay the payment of the fine until the determination of the appeal.

MR. CORRERI: Thank you.

(Whereupon, this matter was concluded.)

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2 mostly obligations on his mortgage. The only way
3 that he can -- that is on each house he has a monthly
4 obligation. The money from the rentals of the apart-
5 ments have almost gone to zero so that there are only
6 a few apartments that have been rented. The only
7 possible way that he could see his way clear if these
8 houses were to be sold and that's the only way he
9 can possibly meet the fine which has been imposed by
10 the Court.

11 The defendant owes in excess of \$1,000.00 in-
12 curred in the investigation, also in ordering daily
13 transcripts of the records.

14 There is an outstanding bill of \$387.00 which is
15 owed to Mr. Silverman for the transcripts and other
16 records, Judge.

17 Now I frankly -- while he may have some assets
18 he doesn't have the funds at the present time.

19 THE COURT: It's his liability.

20 MR. CORRERI: I think on the mortgages --

21 THE COURT: The assets were liable to somebody
22 else.

23 MR. CORRERI: I figure it this way, Judge, it
24 would help the defendant if they forego the disburse-
25 ments which had actually been incurred in order to --

1
2 for the C.J.A. and that the circumstances warrant it
3 and I will direct the Clerk to file a notice of appeal
4 today.

5 MR. CORCORAN: Your Honor, it is my understanding
6 that Mr. Rodriguez still owns a number of houses.

7 THE COURT: I will hold this pending the receipt
8 of C.J.A. form to make sure it is warranted. If it
9 does not warrant it I will revoke it. But I am assum-
10 ing from Mr. Correri's representation that he does
11 not have the funds is correct.

12 Just to protect the situation I will look at the
13 affidavit that is filed. I will ask the Clerk to hold
14 this in the meanwhile. If you find that he has suf-
15 ficient assets you should continue to represent him
16 and file a notice of appeal and will revise this
17 form.

18 MR. CORRERI: Thank you, Judge.

19 (Whereupon, this matter was adjourned for a
20 short while.)

21 THE CLERK: The U.S.A. against Rodriguez.

22 THE COURT: I don't think I can grant it under
23 this condition.

24 MR. CORRERI: If I may offer an explanation.

25 The cash flow here is such that he has incurred

tion of the fine?

THE COURT: I will not stay the imposition of the fine.

MR. CORRERI: I'm sorry, the collection of the fine?

THE COURT: The fine must be paid on or before September 1st.

The notice of appeal should be filed by you today in which case I will stay the execution of the sentence of imprisonment.

I take it that he is capable of affording the services on the appeal so there is no need.

MR. CORRERI: He's not, Your Honor. The fact of the matter is I have been having difficulty getting payment for the minutes of the trial.

THE COURT: Does he want Counsel appointed on the appeal in lieu of yourself?

MR. CORRERI: Ask him if he wants the Court to appoint a Counsel for him other than myself?

THE COURT: It may be that you will get appointed anyway, but I have no control over that. That is done by the Court of Appeals. You have to file an affidavit as you know.

I will assume you are going to file an affidavit

As judged on Count 3 of the indictment, the defendant is hereby committed to the Attorney General or his authorized representative for a term of imprisonment of four years and the defendant shall pay a fine to the United States in the amount of \$1,000.00. Said sentence is to run concurrent with the sentences of Counts 1 and 2 and said fine be in addition to fines imposed on Counts 1 and 2.

As judged on Count 6 of the indictment, the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a term of imprisonment of four years and the defendant should pay a fine of \$1,000.00. Said sentence of imprisonment should run concurrent with the sentences of Counts 1, 2 and 3 and said fine to be in addition to that imposed under Counts 1, 2 and 3.

As far as the fines are concerned they should be paid on or before September 1st and if the defendant intends to file a notice of appeal of course his sentence of imprisonment would be stayed pending such outcome of such appeal.

MR. CORRERI: Yes. It is the intention of the defendant, Your Honor, to appeal and I respectfully ask a stay of the sentence and execution of the imposi-

work. All over the island people are being laid off work, yet illegal aliens are coming into the country and taking jobs away from people who otherwise have them. This traffic has to stop and I know of no other way to stop it other than start meeting out punishments for it.

Unfortunately for Mr. Lopez and Mr. Rodriguez.

I don't think they're going to be the last in the chain of people who are going to be punished.

So, as judged on Count 1 of the indictment, the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a term of imprisonment of four years and the defendant should pay a fine to the United States in the amount of \$1,000.00.

As judged on Count 2 of the indictment, the defendant is hereby committed to the custody of the United States Attorney General or his authorized representative for a term of imprisonment of four years and the defendant should pay a fine to the United States in the amount of \$1,000.00. Said sentence should run concurrent with the sentence imposed on Count 1 and the said fine be in addition to Count

1.

THE DEFENDANT: No. My lawyer has said everything.

THE COURT: Well Mr. Correr, there are two things I want to point out to you.

First that you said you instructed the defendant to cooperate with the Probation Department. Despite the Jury verdict the Defendant continued to maintain his innocence stating that he did not know that any of these persons were illegally in this country. I heard the proof and I can't help but agree with the Jury's verdict on that question.

The second is that you say Lopez case was more venal. On the other hand the Lopez case received a considerable amount of publicity. I don't know if Mr. Rodriguez had been going around with blinders on not to have known of what was going on in the Lopez case and that the prosecution and the results thereof and those offense occurred after that, after the conviction and even after the sentencing in the Lopez case. So, if anything it seems to this Court this offense is more willful if I can use that word rather than the word you used on the Lopez case.

This business of illegal aliens is getting to be one of the most troublesome things in the metropolitan area. All over the city people are being laid off of

1
2 cuit Court of Appeals. Of course it is felt there may
3 be some question of law involved here which of course
4 has been resolved against him at this time, but I
5 think Mr. Rodriguez' attitude and his innocence of any
6 wrongdoing, whether that feeling of innocence is mis-
7 placed or not, I think it explains the feeling of the
8 Probation Department that he has not cooperated because
9 of the fact that he has proclaimed his innocence.

10 The probation report appears to me rather com-
11 plete and has an indication that the defendant did
12 cooperate, particularly in view of the facts and figures
13 which were submitted in the probation report itself.
14 Which while -- well they must have come from other
15 sources appears to come from the defendant.

16 I had directed the defendant to cooperate as
17 fully and completely as possible with the Probation
18 Department in this matter.

19 Your Honor, I feel he is an eligible candidate
20 for probation.

21 I would respectfully ask Your Honor to impose
22 a minimum fine and I do believe that you will have a
23 law abiding citizen from here on forward.

24 THE COURT: Do you wish to say something, Mr.
25 Rodriguez?

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2 There was some capital, profits made in the pro-
3 perty, etc. While the report would indicate there
4 has been a tremendous amount of profiteering from this
5 venture, I think the facts would speak otherwise and
6 what the defendant has here is a small equity in this
7 house which is is trying to realize by effecting the
8 sale of those premises.

9 Your Honor, I do believe there is not the venal
10 quality in the conduct of the defendant.

11 What he has done under the law is to offer food
12 and lodgings to aliens and of course there were 12
13 counts in the indictment as Your Honor is aware and
14 in many of those counts he was founded by the Jury
15 not to have knowledge they were aliens.

16 So that it was only in four instances in which it
17 was found that he did have knowledge of the alien status
18 of the people that were afforded food and lodging.
19 It would appear to me that since this is close on the
20 heels of the Lopez case which Your Honor tried and
21 which Your Honor is familiar, there is lacking in this
22 particular case the venality. I would say it was pre-
23 sent there and there had been no prosecution under
24 the section for some 40 years.

25 Lopez was the first case that went up to the Cir-

MR. CORRERI: No, Your Honor.

THE COURT: Mr. Rodriguez, is there any reason why we shouldn't proceed with sentencing?

THE DEFENDANT: No.

THE COURT: Do you want to say something Mr. Correrri?

MR. CORRERI: Yes, Your Honor.

I have read the probation report in connection with this matter and the concluding paragraph. There are mitigating circumstances with the sentencing of this defendant.

I respectfully submit to Your Honor that the defendant is 37 years of age, has never been in any difficulty with the law before. Has been employed almost continuously as a baker since the time he entered this country. That a good part of his earnings have been used to support himself, and other members of his family.

While the report indicated that the defendant has profited to the extent of approximately \$840.00 a month, the report clearly indicates also that the mortgage payments amount to on the house in excess of \$840.00, as well as the fact there are utilities to be paid.

COLLOQUY

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THE CLERK: United States of America against
Manuel Rodriguez.

MR. CORRERI: Good morning.

Your Honor, could Your Honor call the case again,
my office was in touch with him last week and he is
aware the matter is on. He called my office, they
said they communicated with him and undoubtedly he
must be delayed on his way coming in.

THE COURT: It may be some time before we reach
it again.

MR. CORCORAN: I cannot guarantee that we will
have an interpreter available. Mr. Rodriguez didn't
have an interpreter supplied at the trial.

MR. CORRERI: He has his brother present.

THE COURT: There's nothing we can do without
him. I'm just suggesting, are you going to be avail-
able later?

MISS CLANCY: Yes.

(Short pause.)

MR. CORRERI: He just walked in.

THE COURT: Swear the interpreter.

(Whereupon, the interpreter was sworn.)

THE COURT: Is there any reason why we shouldn't
proceed with sentencing?

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)

)SS:

COUNTY OF NASSAU)

CATHERINE M. CALOGERO

being duly sworn, deposes and says, that
deponent is not a party to the action, is over 18 years of age
and resides at New Hyde Park, New York

That on the 22nd day of October 1975 deponent
served the within Appendix to Appellant's Brief upon Asst.U.S.
Atty. Paul Corcoran, U.S. Attorney's Office, 225 Cadman Plaza, East, Brooklyn,
New York 11201
the address designated by said attorney for that purpose by
depositing a true copy of same enclosed in a postpaid properly
addressed wrapper in an official depository under the exclusive
care and custody of the United States post office department
in Mineola, New York, within the State of New York.

Catherine M. Calogero

Sworn to before me this

Anthony F. Correr
22 day of October 1975

ANTHONY F. CORRERI
NOTARY PUBLIC, State of New York
No. 382500 Qual. in Nassau Co.
Term Expires March 30, 1976